
(1975) 09 BOM CK 0025

Bombay High Court (Nagpur Bench)

Case No: Civil Revision Application No. 267 of 1973

Dhruwa Neelkant

APPELLANT

Vs

Krishna Ramchandra Shastri

RESPONDENT

Date of Decision: Sept. 1, 1975

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13
- Provincial Small Cause Courts Act, 1887 - Section 25
- Soldiers (Litigation) Act, 1925 - Section 10, 2

Citation: AIR 1976 Bom 249

Hon'ble Judges: Dharmadhikari, J

Bench: Single Bench

Advocate: N.M. Dharaskar, for the Appellant; D.V. Dani, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This revision application has been filed against an order passed by the Registrar Small Causes Court, Nagpur dated 6-8-1973 setting aside the ex parte decree passed against non-applicant Krishan Ramchandra Shastri in Civil Suit No. 1454 of 1972 dated 14-11-1972.

2. It seems from the record that the applicant-plaintiff filed a suit against the defendant for recovery of an amount of Rs. 100/- on the allegation that he unauthorisedly removed certain bricks belonging to the plaintiff. I am informed that the suit was filed on 24-7-1972 and a summons was offered to the defendant on 8-8-1972. It seems from the record that in the plaint the defendant was described as an employee in M. E. S. residing at Dharaskar building in Ramdaspath, Nagpur. The defendant did not accept this summons, as, according to him, the description given in the summons was wrong as he was not an employee of the M. E. S. as mentioned in the summons. It seems that the service was held to be good by the Small Causes Court and the ex parte decree was passed against him on 2-11-1972. According to

the defendant Krishna Ramchandra, he came to know about this ex parte decree for the first time on 13-3-1973 and thereafter he filed an application for setting aside the said ex parte decree. In the application he contended that the summons issued to him was not properly issued or served upon him, he being a person governed by the provisions of the Indian Soldiers (Litigation) Act, 1925, the summons ought to have been served upon him by following the procedure prescribed by Order 5, Rule 28, Code of Civil Procedure. This has not been done. He further contended that on the relevant date, namely, on the date of hearing, he was serving under special conditions, and therefore, no proceedings could have been taken against him in the said civil suit. During the course of hearing he filed a certificate issued by his Commanding Officer, namely, Sardulsing, certifying that since 1st February, 1966, the applicant was serving on the permanent and industrial staff of the unit and was serving under special conditions during November 1972, and still continues to do so. In support of his case the non-applicant Krishan examined himself, whereas nobody was examined on behalf of the applicant.

3. After appreciating the evidence adduced before him the learned Registrar of the Small Cause Court came to the conclusion that the summons was not properly issued and served upon the defendant. He also came to the conclusion that the defendant was a soldier serving under special conditions, and therefore, the ex parte decree passed against him was liable to be set aside. Accordingly by his order dated 6-8-1973 he set aside the said ex parte decree and the suit was directed to proceed on merits. As already observed, it is this order which is challenged in this revision application.

4. Shri Dharaskar, the learned counsel for the applicant-plaintiff, contended before me that in the present case the suit was filed on 24-9-1972 and there is no certificate on record to establish the fact that on the said date of the filing of the suit the defendant was a person serving under special conditions. He further contended that it is the date of the suit which is relevant for deciding the question, and therefore, the learned Registrar of the Small Cause Court committed an error in holding that the defendant was entitled to the protection of the provisions of the Indian Soldiers (Litigation) Act, 1925. In support of this proposition he has relied upon the decision of the Lahore High Court in Mahomed Din v. Ilam Din AIR 1923 Lah 455, Barkhurdar v. Karm Din and Mula Mal v. Piara Singh AIR 1924 Lah 395. It is not possible for me to accept these contentions.

5. From the bare reading of the provisions of the Indian Soldiers (Litigation) Act, 1925, it is obvious that a person is entitled to the protection of the said Act if he was serving under special conditions. Section 7 of the Act then provides for issuing a certificate by the prescribed authority. Such a certificate could be issued after receipt of the notice u/s 6 of the Act. In the present case such a certificate has been produced by the defendants. In the certificate it is stated that during November, 1972, and thereafter till the date of the certificate the defendant was serving under

special conditions. In view of this, in my opinion, it cannot be said that the Registrar of the Small Causes Court committed any error in holding that on the date of the hearing, that is, 2-11-1972 the defendant was a person who was serving under special conditions. The decisions to which a reference has been made by Shri Dharaskar deal with the cases where the plaintiff himself claimed to be a soldier. In that context the observations were made by the Lahore High Court. The Indian Soldiers (Litigation) Act, 1925 defines the term "proceedings" vide Section 2(d) of the Act which not only includes a suit, but also includes appeal or application. The definition is an inclusive one, therefore obviously is not exhaustive but illustrative. In the present case relevant date was 2-11-1972 on which the suit was fixed for final disposal, and therefore, on the basis of the evidence on record if the Registrar of the Small Causes Court came to the conclusion that on the date of hearing, that is, 2-1-1972, the defendant was a person who was serving under special conditions, it cannot be said that he has either committed any error of jurisdiction or his order is vitiated by any material irregularity which has resulted in miscarriage of justice.

6. Even otherwise, in my opinion, this is not a fit case wherein any interference is called for in these revisional proceedings instituted u/s 25 of the Small Causes Courts Act. It cannot be forgotten that the summons issued in the name of the defendant was not accepted by him, because obviously there was misdescription. As a soldier he was expecting that he should be served through his Commanding Officer. Even if it is assumed that his was not correct on his part and he committed an error in not accepting the summons, on the basis of the material placed on record it cannot be said that in his misapprehension or misunderstanding of the whole procedure he has not acted bona fide. The claim made in the suit is based on tort. In this view of the matter, in my opinion, it cannot be said that there was no sufficient cause for setting aside the ex parte decree passed against the defendant.

7. In the result, therefore, the revision application fails and is dismissed with costs.

8. Revision dismissed.